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# In the Supreme Court of the United States

OCTOBER TERM 1981

A.W.I., INC. - Petitioner

VERSUS

AMERICAN INSURANCE CO. - Respondents

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

(1) Whether an oil field specialty worker, injured on a vessel situated on inland navigable waters of the United States is covered by the Longshoremen & Harbor Workers Compensation Act (33 U.S.C. §§901, *et seq.*, particularly §§902(3) and 903)).

(2) Whether injury on inland navigable waters, in and of itself, satisfied the dual "situs-status" test imposed by the 1972 Amendments to the LHWCA and enforced previously by this Court but ignored and rejected by the Court of Appeals in this case below.

(3) Whether workers who would have been covered by the LHWCA prior to the 1972 amendments are covered thereafter simply by virtue of the fact that they were covered before, whether or not they qualify under the "status test."

(4) The ultimate issue determinative between the parties to this application is whether or not the restriction against contribution or indemnity contained in Section 5(a) of the LHWCA (33 U.S.C. §905(a)) immunizes the respondent American and its assured, Aquatek from this third party demand by AWI, Inc.

## PARTIES TO THE PROCEEDING

In addition to the parties appearing in the caption to this petition, claimant, Keith Boudreaux and Aquatek, Inc., his former employer, are parties to this action. The Director, Office of Workmens Compensation Programs, United States Department of Labor intervened amicus curiae in the Court of Appeals below.

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## PETITION FOR WRIT OF CERTIORARI

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A.W.I., Inc. petitions this court for a Writ of Certiorari to review the judgment and decree of the United States Court of Appeals for the Fifth Circuit in this case. Petitioner here was the appellant in that Court, and was a defendant and third party plaintiff in the District Court.

## OPINIONS BELOW

The original opinion of the panel of the Court of Appeals (Ap. A, infra, A-1) is reported at 664 F.2d 463 (5th Cir.

1981). Appended to the end of the opinion in the West Reporter is an order granting a rehearing en banc, 664 F.2d 480 (5th Cir. 1982). The opinion of the Court of Appeals, en banc (Ap. B, *infra*, A-47) is reported at 680 F.2d 1034 (5th Cir. 1982). There was no formal opinion by the district court in the dismissal of petitioner's third party demand.

## JURISDICTION

The original opinion of the Court of Appeals was handed down on December 7, 1981. Rehearing was timely applied for, and was granted en banc on January 11, 1982. After argument en banc, the opinion on rehearing was handed down on July 6, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## STATUTE INVOLVED

Sections 2(3) and 2(4) of the Longshoremen & Harbor Workers Compensation Act (33 U.S.C. §§902(3) and 902(4)) provides in pertinent part:

> (3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and shipbreaker ...
>
> (4) The term "employer" means an employer any of whose employees are employed in maritime employment, in while or in part, upon the navigable waters of the United States (including

> any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

Section 3(a) of the Longshoremen & Harbor Workers Compensation Act (33 U.S.C. §903(a)) provides in pertinent part:

> Sec. 3.(a) Composition [sic] shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel ...

## STATEMENT OF THE CASE

The facts applicable to this case are stated in the appendix to the panel opinion (664 F.2d at 469). The case arose to the Court of Appeals on a judgment granting a motion for summary judgment, so there is no dispute as to the facts.

Plaintiff Boudreaux was a wireline hand employed by Aquatek, Inc. Aquatek was called out by Texaco, Inc. to perform wireline services aboard an inland workover barge owned and operated by AWI, Inc. There was no direct contractual relationship between AWI, Inc. and Aquatek. Aquatek was insured for its liability in the pre-

mises by American Insurance Co.

Boudreaux was injured in the course of the performance of this work. His accident occurred, as stated, on a barge workover rig owned by AWI, Inc., located in navigable waters in the territorial confines of the State of Louisiana. As a result of the accident and the injuries sustained, Boudreaux made claim for benefits under the Longshoremen & Harbor Workers Compensation Act, and these benefits were paid by American Insurance Co., as the insurer of Boudreaux's employer, Aquatek.

Subsequently, Boudreaux filed suit against AWI, Inc., alleging that his accident was the result of the fault on the part of the defendant. AWI, in turn, filed a third party demand for indemnity and contribution against plaintiff's employer, Aquatek, Inc. and its insurer, American Insurance Co. (under the Louisiana Direct Action Statute, La. R.S. 22:658). At about the same time, American intervened to recoup the payments previously made by it to the plaintiff and on his behalf.

Service was delayed on Aquatek, but American responded to the third party demand with a motion for summary dismissal of the third party demand, essentially contending that it and its assured were immune from any such demand under Section 5(a) of the LHWCA. The motion was resisted on the basis of the contention by the third party plaintiff that the LHWCA was inapplicable to the matter because of an absence of "status."

Wirelining is an oil field activity which involves the insertion of various tools in the well for the performance of various wells therein (removal of unwanted objects from the hole, insertion of control devices, perforation of the stem at different levels, etc.). It is a procedure which must be performed on all oil and gas production wells, regardless of whether these tasks are on land, over the water, or under platforms on the Outer Continental Shelf. Wirelining is not peculiar to wells located over the water.

The district court granted American's motion for summary judgment and, thereafter, made this action a final judgment under Rule 54(b) Federal Rules of Civil Procedure, and AWI appealed to the United States Court of Appeals for the Fifth Circuit.

After argument, and over one dissent, the panel of the Court of Appeals held that the juridical relationship between the claimant, Boudreaux, and his employer, Aquatek, was governed by the LHWCA, and affirmed the judgment of the district court dismissing the third party demand. The reasoning was that (1) there was no intention on the part of Congress to diminish coverage of the LHWCA by the passage of the 1972 amendments thereto; (2) claimant was doing work which was in keeping with the mission of the vessel, and therefore his work was maritime in nature as a result and (3) oil field service work (wirelining) was inherently maritime in character in that it bore a significant relationship to the maritime navigation and commerce, and therefore said work was covered by the

LHWCA as long as it was performed over the navigable waters of the United States.

The dissent focused on two points (1) that the decision was contrary to the decisions of each of the other maritime circuits on point, and (2) that the decision constituted judicial legislation in failing to follow the decisions of this Court which require the dual inquiry as to situs and status.

An application for rehearing was granted en banc. After argument, the panel decision was reaffirmed, although the emphasis shifted slightly. The decision on rehearing focuses principally on the conclusion that there was no manifest intention on the part of Congress to restrict coverage in the 1972 amendments and, since Boudreaux would have been covered prior to 1972, he is covered now. Justification for the decision is also drawn from the original conclusion that there is something maritime about each employment which is done over navigable waters, that is to say that, where the work is done over the water, there is coverage by the LHWCA regardless of the nature of the work.

The holding dictated the dismissal of the third party demand by the vessel owner, AWI, Inc. against American and Aquatek, the employer of the claimant.

## JURISDICTION IN THE COURT OF THE FIRST INSTANCE

The jurisdiction of the District Court was invoked under the Constitution of the United States, Article III, Section 2, this being a case within the admiralty and maritime jurisdiction of the United States Courts. See also 28 U.S.C. §1333.

## REASONS FOR GRANTING THE WRIT

The principal articulated major premise of the Court of Appeals decision is that where an accident and employment related injury occurs on navigable waters, there is coverage *ipso facto* under LHWCA, regardless of the nature of the work being performed at the time of the accident. This conclusion is reached from the proposition that (1) there was no intention on the part of Congress to restrict coverage then existing in any way (Boudreaux would have been covered prior to 1972) and (2) everything done, regardless of what it is, is maritime if it occurs over the water.

Almost as an aside, the Court of Appeals then finds that there would be coverage in any event, because oil field service work is inherently maritime, and "bears a significant relationship to maritime commerce and navigation."

As to these, the reasons for granting the writ are as follows:

(1) The principal premise in the Court of Appeals opinion admittedly (680 F.2d at 1036) reaches the question which was reserved by this Court in *Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249, 266 n. 25, 97 S.Ct. 2348, 2358 n. 25 (1977). The question should be settled by this Court.

(2) The principal basis for the decision in the Court below is in conflict with the decisions of this Court, at least by implication, and this variance should be corrected by this Court.

(3) The principal basis for the decision of the Court below is at variance with the decisions on point of the other circuits which have considered the question, and the conflict between the circuits should be considered by this Court.

(4) The secondary basis for the decision below (that there is something inherently maritime about wirelining) is contrary to the prior decisions by this Court. If it is not in conflict with prior decisions of this court, it represents an issue which this court should decide in the first instance.

(1) Argument on Point 1 - *The Question Should Be Resolved By The Supreme Court.*

The question posed in this case is that reserved specifically by this Court in *Caputo, supra.* See note 25, 432 U.S. at 266, 97 S.Ct. at 2358:

> 25. As the definition of "employee" makes clear, the category of persons engaged in maritime employment includes more than longshoremen and persons engaged in longshoring operations. It is, however, unnecessary in this case to look beyond these two subcategories.
>
> This case also does not involve the question whether Congress excluded people who would have been covered before the 1972 Amendments; that is, workers who are injured on navigable waters as previously defined. See *Weyerhauser Co. v. Gilmore*, 528 F.2d 957 (CA9), *cert denied*, 429 U.S. 868, 97 S.Ct. 179, 50 L.Ed.2d 148 (1976).

The Court of appeals in the case at bar has decided specifically that there was no restriction of coverage intended by the 1972 amendments to the LHWCA. It is undisputed by the petitioner herein that, prior to 1972, Boudreaux would have been covered by the LHWCA as then written. The Court of Appeals holds that since this is so, he is covered now because there was no limitation of coverage by the 1972 amendments.

We suggest that this decision is in conflict with prior decisions of this court, a point which will be covered *infra*..

We also suggest that the conclusion is unwarranted from a reading of the statute, its legislative history and the jurisprudence interpretive thereof. The Court of Appeal, en banc, supports its theorem that there was no intended diminution of coverage from one passage in the Senate report which makes reference to "other employees tradi-

tionally covered." See Footnote 14, 680 F.2d at 1042 and the discussions leading up to and following that footnote. The reasoning seems to be that, since a claimant like Boudreaux would have been covered previously to 1972 by virtue of the geographical location of his injury, he is covered now as a "traditional" maritime worker. That reasoning is clearly a mixing of concepts.[1] Oil field work is not now and never has been "traditional maritime activity." See e.g. *Rodrigue v. Aetna Cas. & Surety Co.*, 395 U.S. 352 89 S.Ct. 1835 (1969).

In other references, Congress declared that a person was not intended to be covered simply because he happened to be in a covered area. See the House Report reprinted at U.S. Code, Cong. & Adm. News 4698, 4708 (1972). The identical Senate report is at page 13, S. Rep. No. 1125, 92nd Congress, 2d Session.

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[1] The point in this reference seems to be that persons covered previously are "traditionally covered." The reference is to the Senate report, page 16, in that portion of said report, page 16, in that portion of said report which contained the "full analysis." What it said, in pertinent part was:

> "Section 2(a) amended Section 2(3) of the Act to define an 'employee' as any person engaged in maritime employment. The definition specifically includes any longshoreman ... it does not exclude other employees traditionally covered. ***"

In context, the reference to "traditionally covered" employees must be to those engaged in maritime employment, not to those covered under the pre-1972 Act by virtue of their fortuitous injury over navigable waters. This view is confirmed by the other references in this petition wherein fortuitous presence at a particular point was stated not to be sufficient to invoke coverage. See discussion immediately following this footnote.

The reasoning of this Court in its decisions on point since the passage of the 1972 amendments supports this view. Prior to the 1972 amendments, it was enough for coverage that the accident and injury occur over navigable waters. Subsequent to the passage of these amendments, especially in view of the amendments to Sections 2(3) and 3(a) (33 U.S.C. §§902(3) and 903(a)) there was a requirement that *both* a geographical *and* an occupational test be met. This Court has held this (*Caputo, supra*) and reiterated it (*P. C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 100 S.Ct. 328 (1979)). This being so, it necessarily follows that workmen injured on navigable waters might not be covered by the LHWCA because of their failure to meet the occupational test. Certainly, they would meet the geographical test. Boudreaux did, and no one disputes that. However, unless a worker in Boudreaux's category meets the occupational test, he is not covered. At least, that is what this Court has said at least twice.

In this case, the Court of Appeals has stated that it is enough for coverage that the accident occurred on navigable waters. It bottoms that the conclusion on two premises (1) that there was no intention to restrict coverage by the 1972 amendments, and to hold otherwise would restrict coverage, and (2) everything done on the water is by definition maritime.

We suggest that the very conclusion by this Court in *Caputo* and *Ford* that there is now a dual test where before there was only a geographical one, demonstrates the error

into which the Court of Appeals fell, as to both premises mentioned. First, the existence of a dual test indicates by its very existence the fact that some occupations done over the water might not necessarily be maritime. See, for example, the occupations in *Weyerhauser Co. v. Gilmore*, 528 F.2d 957 (9th Cir. 1975); *Cert. denied*, 429 U.S. 868, 97 S.Ct. 179 (1976), and in *Fusco v. Perini North River Associates*, 601 F.2d 659 (2d Cir. 1979), *Vacated and remanded*, 444 U.S. 1028, 100 S.Ct. 697 (1980); *on remand*, 622 F.2d 1111 (2d Cir. 1980), *cert. denied*, 449 U.S. 1131, 101 S.Ct. 953 (1981).

Secondly, and this follows from the first, if we have what amounts to a geographical test (as announced by the Court of Appeal) that is, if there is coverage simply by virtue of the fact that the accident occurs on navigable waters, then, as to such a holding, this Court ought to make it, since it has not yet done so, at least insofar as our research goes.

(2) Argument on Point 2 - *The Decision Below Is In Conflict With Decisions Of This Court.*

The argument here overlaps with the argument above. The refusal of the Court of Appeal to apply the dual situs and status test is one example. The Court of Appeals, having announced its articulated major premise that there was no restriction intended by the 1972 amendments, simply holds that an accident occurring on navigable water was covered by definition. See 680 F.2d at 1042. Put

another way, "situs" *is* "status" where the accident occurs on navigable water.

The point in this is that this Court has held that there is a dual test to be used in determining coverage under the LHWCA. The Court of Appeal has substituted a single geographical test for those accidents which occur over the navigable waters. The result obtained below is in conflict with the decisions of this Court in *Caputo* and *Ford*, both *supra*.

In addition, at least inferentially, the conclusion is justifiable that this Court considers that some workmen who would have been covered by the LHWCA prior to 1972 are not covered now. In making this argument, the writer is mindful of the oft quoted maxim that no definitive conclusion is to be derived from a denial of an application for writs to this Court. However, it is difficult to avoid some significance to this Court's denial of the writ application in *Weyerhauser Co. v. Gilmore*, 528 F.2d 957 (9th Cir. 1975), *Cert. denied*, 429 U.S. 868, 97 S.Ct. 179 (1976).

It is even more difficult to avoid attributing significance to the actions of this Court in the *Fusco* series of cases. *Fusco v. Perini North River Assoc.*, 601 F.2d 659 (2d Cir. 1979); *vacated and remanded*, 444 F.2d 1028, 100 S.Ct. 697 (1980); *on remand*, 622 F.2d 1111 (2d Cir. 1980); *Cert. denied*, 449 U.S. 1131, 101 S.Ct. 953 (1981).

In *Weyerhauser*, the worker was hurt while tending

a log jam on navigable waters. Clearly under the appellate opinion in our cases there would have been coverage, yet the Ninth Circuit held no coverage and this Court denied writs. In *Fusco*, the worker was working on a sewerage treatment plant on navigable waters. Under the opinion of the Fifth Circuit here there would have been coverage. Originally giving reasons somewhat similar to those below in this case, the Second Circuit upheld coverage under the LHWCA. This Court remanded in view of its then recent decision in *P. C. Pfeiffer Co. v. Ford, supra.* The Second Circuit reconsidered and reversed itself, finding no coverage. An application was denied. This leads to the conclusion that the decision at first that there was coverage was unacceptable and that the second decision finding no coverage was acceptable.

In these ways, we suggest that the decision of the Court below is at variance with the letter and spirit of this Court's prior decisions on point, and that this Court should review it.

(3) Argument On Point 3 - *The Decision Below Is At Variance And In Conflict With the Decisions Of The Other Circuits.*

Here, again, there is some overlap from the preceding argument. The *Weyerhauser* and *Fusco* cases have previously been discussed in another context. However, it is plain that, as decisions of the other circuits they are irreconcilable with the decision below, both as to result and

reasoning.

The result below is even at variance with the result in the prior decisions of the Fifth Circuit. See *Thibodeaux v. Atlantic Richfield Co.*, 580 F.2d 841 (5th Cir. 1978) *Cert. denied* 442 U.S. 909, 99 S.Ct. 2820 (1978) in which a workman drowned on navigable water was held to be not covered by the LHWCA. The reasoning in *Thibodeaux* is ironic because the denial of LHWCA coverage is on the ground that the claimant's decision lacked "status" under the dual test mandated by this Court's opinion in *Caputo, supra.* This is the precise test that the same Court declined to follow in the case at bar.

There are six major maritime circuits. The First, Third and Fourth Circuits have not faced the precise factual setting presented in this case, that is, they have not had to decide whether a person injured over navigable water and, perforce, covered prior to 1972 would be excluded now as a result of the amendment, and as a result of dual inquiry mandated by *Caputo* and *Ford.* However, in the opinions that have come out of those circuits, it appears that their views would be consistent with the position of petitioner here, that is, in each case, the dual inquiry would be made, and the fact that an accident occurred over navigable water would not be enough, and of itself, to create coverage under the LHWCA where the type of employment was not maritime in character. See *Graziano v. General Dynamics Corp.*, 663 F.2d 340 (1st Cir. 1981); *Dravo Corp. v. Banks,* 567 F.2d 593 (3d Cir. 1977);

*Caldwell v. Ogden Sea Transp., Inc.*, 618 F.2d 1037 (4th Cir. 1980).

The Second and Ninth Circuits have spoken clearly in the same factual setting presented here, to the effect that situs alone, that is, occurrence over navigable waters by itself, is not enough to create coverage under the LHWCA. See *Churchill v. Perini North River Assoc.*, 652 F.2d 255 (2d Cir. 1981) to the same effect. Only the Fifth Circuit is to the contrary in the opinion which is the subject of this application. And that opinion is contrary to its prior jurisprudence. See *Thibodeaux v. Atlantic Richfield Co., supra.*

We are aware that a writ application to this Court in *Churchill* was granted (Docket No. 81-897, __ U.S. __, 102 S.Ct. 1425 (1982)), and that that case is scheduled for argument shortly. It may very well be that the issues presented in this application will be decided in that case. However, since it appears that Mr. Churchill was loading a vessel, it may very well be that the critical fact will result in a reversal of the Second Circuit short of the issues presented by this Petition.[2]

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[2] See, e.g. *Gilliam v. Wiley N. Jackson Co.*, 659 F.2d 54 (5th Cir., Unit "B", now 11th Cir. 1981). In that case, the claimant was not in an occupation which would have qualified as maritime. However, the circuit Court held (659 F.2d at 58):

> "Because Gilliam was engaged in maritime employment, i.e. longshoring, at the time of his injury, it follows *a fortiori*, that his work had a realistically significant relationship to maritime activities involving navigation and commerce. ..."

The point in this is that, as is demonstrated hereinafter, there is nothing "traditionally maritime" about wirelining.

The point in this argument is that the result obtained below in this case is in conflict with the result in at least two other circuits in indistinguishable factual situations. It is contrary to the stated philosophy of the other three major maritime circuits. The result obtained in this case should not be permitted to stand in view of this.

(4) Argument on Point 4 - *Oil Field Service Work As Inherently Maritime ("Significant Relationship To Maritime Commerce and Navigation").*

As a secondary basis for its conclusion that the juridical relationship between Boudreaux and Aquatek is governed by the LHWCA, the Court of Appeal held that oil field servic rk was inherently maritime, and that it bore a significant relationship to maritime commerce and navigation. See the discussion beginning on page 1052 of 680 F.2d. We suggest that this is directly in conflict with prior decisions by this Court, particularly with the literal sense and the reasoning of *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 89 S.Ct. 1835 (1969). The *Rodrigue* decision involved two cases, *Dore v. Link Belt Co.*, 391 F.2d 671 (5th Cir. 1968) and *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 F.2d 216 (5th Cir. 1968). Both *Dore* and the *Rodrigue* decedent were doing oil field service work on artificial island platforms in the Gulf of Mexico. The *Rodrigue* decedent, according to the opinion in the appellate Court and here, was doing essentially the same work that Mr. Boudreaux was doing in our case. Conformably with prior jurisprudence, each of the cases was treated as an admiral-

ty case, and only admiralty relief was afforded, rejecting more favorable state relief.

This Court reversed. Among the reasons for the reversal, there is a discussion beginning at 395 U.S. at 360 (89 S.Ct. at 1839):

> The accidents in question here involved no collision with a vessel, and the structures were not navigational aids. They were islands, albeit artificial ones, it was an island, albeit an artificial one, *and the accidents had no more connection with the ordinary stuff of admiralty than do accidents on piers.* Indeed, the Court has specifically held that drilling platforms are not within admiralty jurisdiction. (Citation omitted) There a ship damaged a structure "composed of various lengths of wrought iron pipe surrounded by a platform on the surface." Citing the same cases on which the lower court had relied this Court affirmed its conclusion that jurisdiction was lacking since the "project which the libellant was engaged in is not even suggestive of maritime affairs. It was supplying water to a city and the mere fact of the means being carried under the bed of a river, with extensions through the river to the surface, did not create any maritime right, nor was it in any sense an aid to navigation, which was the distinguishing feature of The Blackheath." 162 F., at 496. In these circumstances, the Seas Act—which clearly would not apply under conventional admiralty principles and, since the Lands Act provides an alternative federal remedy through adopted state law, there is no reason to assume that Congress intended to extend those principles to create an admiralty remedy here. And if the Congress had made the 1920 Seas Act applicable, ousting in-

> consistent state law, the artificial island worker would be entitled to far less comprehensive remedies in many cases than he is now. (Emphasis added.)

The quotation is delivered in full because, while the factual context is different, the legal context is precisely the same. The contention there was that the work which *Dore* and the *Rodrigue* decedent were doing was maritime employment, thus begetting the application of the law of the admiralty thereto. The Court, in that discussion, is reaching the conclusion that such is not the case. "...[T]he accidents had no more connection with the ordinary stuff of admiralty than do accidents on piers." The point as it addresses the secondary point in this case is that the Fifth Circuit has held that an accident substantially similar to the *Rodrigue* accident, and legally indistinguishable from it was "maritime in character," that the employment Boudreaux was engaged in was "maritime" where Rodrigue's was not.

The only difference between Boudreaux's accident and Rodrigue's accident was that the one occurred on a vessel and the other occurred on a platform. This relates back to the points made above as to the major premise of the Court of Appeals decision. The work is maritime for the sole reason that it is performed on a vessel. That conclusion was invalid in the major premise, and it is equally invalid here. Oil field service work did not bear a significant relationship to maritime navigation and commerce in *Rodrigue*, and the decision in this case that it does here is

in conflict with the prior decision of the Court.

In addition, when considered in the light of the admitted fact that this sort of work must be done on every oil and gas production well, whether on navigable water or on dry land in Wyoming, 2,000 miles from the nearest seashore, the statement that wirelining per se is "inherently maritime" is unsupportable.

In conclusion on the reasons for granting the writ in this case, the decision of the Fifth Circuit is that there is coverage under the LHWCA where an accident occurs on navigable water regardless of the nature of the work being done, this is premised on the proposition that (1) no recession of coverage was intended by Congress in the passage of the 1972 amendments to the LHWCA and (2) Everything done on the water, regardless of what it is, is maritime in nature. This conclusion of coverage is something that this Court ought to decide if it is the law, it is something that is in conflict with the letter and spirit of this Court's decision in a prior case, and is also in conflict with the reasoning of *Caputo* and *Ford.* This is so because wirelining is not something that is done on oil and gas wells on the water. It must be done on all such wells, whether on land, on the water or offshore on platforms.

## CONCLUSION

The Petition for a Writ of Certiorari should be granted.

MONTGOMERY, BARNETT,
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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 4TH day of October, 1982, served a copy of the foregoing pleading on all counsel to this proceeding by mailing same by United States Mail, properly addressed and first class postage prepaid.

WOOD BROWN III